

Aboriginal Land Claims and Cultural Resource Management

Comprehensive land claims in Canada are an attempt to conclude agreements with Aboriginal groups so as to resolve the legal ambiguities associated with the common law concept of Aboriginal rights. Based on traditional land use and occupancy by Aboriginal peoples who did not sign treaties and were not displaced from their lands, comprehensive agreements give Aboriginal groups jurisdiction over portions of their traditional settlement areas.

Land claim agreements establish certainty of ownership, stimulate economic development and ensure that Aboriginal groups share in the benefits of development. They encourage Aboriginal People to participate in government, and recognize Aboriginal interests in renewable resource management and environmental protection.

Settlements can include financial compensation, rights to surface and sub-surface land, wildlife harvesting, representation on land and water management, and environmental protection boards, and the right to share in revenues derived from natural resources. Land claim agreements define the rights and benefits to which members of a particular group are entitled. In exchange, the beneficiaries agree not to assert Aboriginal rights beyond those specified.

Land claim agreements are negotiated by three parties—a specific Inuit or First Nations group, a provincial or territorial government, and Canada, with the Department of Indian Affairs and Northern Development as the lead federal department. Other federal departments—such as the Department of Canadian Heritage—become involved in land claim negotiations when their mandates are affected. Parks Canada, with a mandate to protect and present areas of cultural and natural significance to all Canadians, has established new national parks

and historic sites within settlement areas in co-operation with Aboriginal groups.

Each land claim agreement is individual, although agreements do build on one another in some ways. The 1975 James Bay Agreement with Quebec's Cree, Inuit and Naskapi Peoples was the first negotiated in Canada since the 1920s. Many issues were discussed during negotiations, and the final agreement did not include provisions to recognize and protect heritage resources on settlement lands. The Inuvialuit Final Agreement following in 1984 also did not include cultural and heritage resource management provisions. More recent agreements all have sections dealing with heritage, culture and archaeology, including three that will be discussed in this paper: the Council for Yukon Indians (CYI, 1993), the Sahtu (1993) and the Tungavik Federation of Nunavut (TFN,

Approximate claim boundaries.



1993). The Inuvialuit Final Agreement (IFA) allows for the creation of one new national park on Inuvialuit Settlement Land, and we will consider CRM issues as outlined in the separate agreement to establish Aulavik National Park on Banks Island under terms in the IFA in 1992. There are widely varying solutions being reached with respect to cultural heritage management.

By the time this child joins the seal hunt as a full participant, he already will have developed many of the necessary skills by practicing in stone canoes under the experienced eyes of his community's hunters. Arviat Historical Society photo.



Aboriginal Interests in their Heritage

Although the 1984 IFA has no heritage chapter, the agreement does imply interest in heritage in the statement of land selection criteria that includes "historic Inuvialuit sites or burial grounds." The CYI, Sahtu and TFN agreements strongly and specifically state the importance to the people of their heritage. One objective of the CYI's Heritage Chapter is "to recognize the interest of Yukon Indian People in the interpretation of aboriginal Place Names and Heritage Resources directly related to the culture of Yukon Indian People." The Sahtu Agreement states the matter similarly: "Sahtu heritage resources provide a record of participants use and occupancy of the settlement area through time and are of spiritual, cultural, religious or educational significance to the participants." The TFN Agreement asserts that:

The archaeological record of the Inuit of the Nunavut Settlement Area is a record of Inuit use and occupancy of lands and resources through time. The evidence ... represents a cultural, historical and ethnographic heritage of Inuit society and, as such, Government recognizes that Inuit have a special relationship with such evidence which shall be expressed in terms of special rights and responsibilities.

Role in Decision Making

Generally, decisions about heritage resources on settlement lands are made by management

boards with Aboriginal representation that is either equal to government representation or weighted in favour of Aboriginal People. Park-specific boards, such as the Kluane Park Management Board, regional boards, such as the Yukon's Renewable Resources Council, and Territorial boards such as the Inuit Heritage Trust, have been established.

By provisions of the CYI Agreement, the Kluane National Park Management Board eventually will include members from three separate Yukon First Nations who have overlapping traditional territories within the park. The CYI agreement also provides for the creation of the Yukon Heritage Resources Board to advise territorial and federal heritage ministers and to help determine ownership of certain kinds of heritage objects. Conservation and management of heritage resources in the Sahtu Settlement Area includes active involvement by the Sahtu Tribal Council. New national parks in the Sahtu region will each have a management committee to advise the Minister on all park issues. One task of the TFN-created Inuit Heritage Trust is to:

...assume increasing responsibilities for supporting, encouraging, and facilitating the conservation, maintenance, restoration and display of archaeological sites and specimens in the Nunavut Settlement Area.

National Parks in the Nunavut Settlement area all will have cooperative management boards with equal representation appointed by Inuit and Government.

Ownership and Disposition of Cultural Resources

Ownership of heritage resources is discussed in terms of three main categories: artifacts (moveable heritage resources), traditional knowledge/oral histories and archival documents. The CYI has complex provisions about ownership and management of heritage resources based on whose land they are found on and whether or not they are directly related to the culture and history of Yukon Indian People:

Each Yukon First Nation shall own and manage Moveable Heritage Resources and non-Moveable Heritage Resources and Non-Public Records ... found on its Settlement Land....

Furthermore,
... each Yukon First Nation shall own and manage ethnographic Moveable Heritage Resources and Documentary Heritage Resources that are not Public Records and that are not the private property of any Person, that are found in its respective Traditional Territory and that are directly related to the culture and history of Yukon Indian People.

Therefore, if the traditional territory of a Yukon First Nation includes a National Park or a National Historic Site, that First Nation owns ethnographic artifacts related to its culture and history found in the park or site. However, archaeological artifacts continue to be owned by Government in this situation. The agreement provides a mechanism to determine ownership of a heritage resource claimed by more than one Yukon First Nation.

In contrast, the Sahtu Agreement avoids the issue of ownership of Sahtu cultural resources, but does suggest that they should be accessible to the people of the area. The TFN Agreement provides that government and the Inuit Heritage Trust jointly own archaeological specimens from the Nunavut Settlement Area, except those that are public records, any person's private property, or found within areas administered by Parks Canada. Provisions in the TFN concerning ethnographic objects and archival materials focus on management and loans, not on ownership.

Repatriation

Ethnographic material in Canadian museums has become subject to negotiation in land claim agreements. Most northern agreements accept conditions on the return of materials, and acknowledge that repatriation may take a long time.

The CYI Agreement commits government to assist Yukon First Nations in repatriation of artifacts and documents related to their culture and history. The Sahtu Agreement says that artifacts and records related to Sahtu heritage should be returned to the settlement area or to the Northwest Territories, provided that proper maintenance and exhibition facilities and expertise exist there and pledges mutual assistance. The TFN Agreement does not distinguish between materials related and not related to Inuit history. The Inuit Heritage Trust must be involved in decisions about the disposition of archaeological materials and must con-

sent to any long-term alienation of specimens found in Nunavut. The IHT establishes its right to request possession of archaeological and ethnographic materials from the area, and recognizes the principles of maintaining specimens without risk, public and scientific access, including terms and requirements for research or display, and care of specimens.

Research/Archaeological Permits

The CYI, Sahtu and TFN agreements all include provisions for involving Aboriginal Peoples in any development of new legislation about granting research permits. In some cases, research reports must be translated and made available to the Aboriginal community. A Yukon Heritage Resources Board, composed of CYI and government appointed members, makes recommendations on managing artifacts and heritage sites. The Sahtu Tribal Council must be consulted when government formulates policy and legislation that will affect Sahtu heritage resources in the Mackenzie Valley. Permits will not be issued by government for work on Sahtu heritage resources without the Tribal Council's approval, and will specify procedures regarding site protection and restoration, consultation with local communities, disposition of materials extracted, and submission of technical and non-technical reports. The TFN Agreement provides that government and the Inuit Heritage Trust together will develop policy and legislation for a permit system to govern the protection, excavation and restoration, recording and reporting of archaeological sites. Active participation of Inuit in archaeological investigations in Nunavut may be a condition of permits.

Human Remains

Land claim agreements reflect concerns that human remains should be protected and treated with respect. The CYI Agreement calls for government and Yukon First Nations to each establish procedures to restrict access to burial sites and ensure that disturbance of burial sites is halted even on non-settlement lands. The Sahtu agreement provides that a "Sahtu burial site in the settlement area shall not be disturbed except after consultation with the Sahtu Tribal Council and after appropriate measures have been taken to respect the dignity of the site." Human burials are not mentioned specifically in the TFN Agreement, but according to the Aulavik Park agreement, Parks Canada will not permit disturbance of burial sites or human remains affiliated with Inuvialuit or Inuit culture without first consulting the Sachs Harbour Hunters and Trappers Committee and the Sachs Harbour Community Corporation, or without the written consent of the Inuvialuit Regional Corporation.

Archaeologists conducting a survey at the Fall Caribou Crossing, Kazan River, Nunavut, Canada. Photo by Lyle Henderson.



Environmental Assessment

Comprehensive land claim agreements have created environmental impact or development assessment boards composed of Aboriginal and government representatives. The IFA, CYI, Sahtu, and TFN Agreements contain clauses that make impact assessment a part of the process of establishing a new national park or historic site. The Aulavik National Park establishment agreement states that "all programs, procedures, plans, developments and activities proposed for Park lands are subject to the Environmental Impact Screening and Review process in ... the IFA."

Other Issues in Land Claim Agreements

Heritage resource matters do not begin and end with the tangible aspects of culture, that is, with sites, artifacts and documents. Land claim agreements reflect different cultural values by including special provisions about them.

The CYI has a "catch up, keep up" clause that attempts to redress an imbalance in heritage presentation in the Yukon:

As the heritage Resources of Yukon Indian People are underdeveloped relative to non-Indian Heritage Resources, priority in the allocation of Government program resources available ... for Yukon Heritage Resources development and management shall ... be given to the development and management of Heritage Resources of Yukon Indian People, until an equitable distribution of program resources is achieved.

The possibility of returning to traditional place names for "certain lakes, rivers, mountains and other geographic features and locations in the [Sahtu] settlement area" and for "various locations, geographic features and landmarks" in the Nunavut Settlement Area is allowed for in two agreements. The TFN Agreement also safeguards the people's right to continue using archaeological sites in their settlement area as they always have, subject to policy guidelines from the Inuit Heritage Trust. The Sahtu agreement spells out that in new parks established in the settlement area people will be entitled to "continued use of participants camps, cabins and traditional travel routes for the exercise of the harvesting rights," and that Sahtu people might continue to gather flora in new national parks, for "food, medicine, cultural and other personal purposes" and trees for constructing and maintaining cabins and camps and for fuel.

The Aulavik National Park Establishment Agreement has an innovative clause that speaks to the way that Aboriginal culture is presented to the public. It stipulates that the Inuvialuit reserve the right to approve "information concerning

Inuvialuit history or culture on Banks Island ... prepared ... for public distribution."

The Future of Land Claim Agreements

Negotiation of comprehensive claims in Canada is a lengthy process even when all three parties are ready. The Nisga'a Agreement in Principle in British Columbia represents that province's first comprehensive land claim, and almost 50 submissions from other Aboriginal groups have been accepted by the British Columbia Treaty Commission. Newfoundland is negotiating two comprehensive claims with the Labrador Inuit Association and the Innu Nation. Of 14 Yukon First Nations covered under the CYI Agreement, five have completed their Band Final Agreements, and more are underway. Some Yukon First Nations will have to negotiate separate settlement agreements with the province of British Columbia as well. Comprehensive claims are being negotiated in Quebec and in the Northwest Territories. Archaeologists working in Canada are following developments in land claim agreements very closely. The way archaeologists do their work, who their work is done for, and who it will be done with, will be affected by land claim agreements already negotiated and signed, and by those in the future.

References

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